RECEIVED

JUN 14 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Service	)))	CC Docket No. 94-54

COMMENTS OF THE
NATIONAL TELEPHONE COOPERATIVE ASSOCIATION

The National Telephone Cooperative Association ("NTCA") submits the following Comments in response to the Second Notice of Proposed Rulemaking, FCC 95-149, released by the Commission on April 20, 1995, in the above-captioned docket ("SNPRM"). This proceeding is examining issues pertaining to interconnection requirements and resale obligations for and among Commercial Mobile Radio Services ("CMRS") providers.

NTCA is a national association of approximately 500 small local exchange carriers ("LECs") providing telecommunications services to subscribers and interexchange carriers ("IXCs") across rural and small town America. Some of NTCA's members are also sole providers of cellular service while others offer cellular service in partnership with other entities. Still more member LECs have plans to become Personal Communications Services providers in and around their areas.

I. THE COMMISSION SHOULD MAINTAIN ITS CAUTIOUS, NON-INTRUSIVE REGULATORY APPROACH TO CMRS INTERCONNECTION REQUIREMENTS.

NTCA fully agrees with the Commission that it would be premature to adopt and impose interconnection requirements on CMRS providers at this time. The Commission should allow market forces an adequate chance to determine interconnection terms and conditions among CMRS providers, if needed. The CMRS industry is significantly different from the LEC industry, and therefore, interconnection requirements developed for other industries that are characterized by single providers should not, and need not, form the framework for the CMRS industry at this time. The CMRS industry is very likely to be characterized by multiple providers which will compete for customers on the basis of a number of service differences. To the extent that CMRS-to-CMRS interconnection leads to attractive features, there would appear to be sufficient incentive for at least some CMRS providers to seek interconnection with each other in order to distinguish their services in the marketplace. The experience of the existing CMRS providers is that similar incentives have produced beneficial results.

II. SMALL LECs HAVE LITTLE CHANCE OF DOMINATING THE CMRS MARKET THROUGH INTERCONNECTION OFFERINGS.

The Commission states that it will monitor interconnection activity and "stands ready to intercede in the event a CMRS provider refuses a reasonable request to interconnection." SNPRM at para. 43. The Commission states that this supervision may be necessary to identify anticompetitive intentions. Id. Moreover, the Commission believes that LEC-affiliated CMRS providers may have unfair competitive interests relative to independent CMRS providers, thus requiring greater interconnection oversight. Id. The Commission notes that CMRS providers affiliated with LECs may want to maintain CMRS-to-LEC interconnection, as opposed to offering or allowing CMRS-to-CMRS interconnection, in an effort to maintain access charge revenues. Id. The Commission seeks comment on the relation of LEC investment in CMRS providers to a connection with possible anticompetitive conduct.

These fears are inapposite and premature with respect to the motives and opportunities of the CMRS providers that are affiliated only with small LECs. As the Commission and commenting parties observe, the amount of CMRS-to-CMRS traffic compared to CMRS-to-landline traffic is small and will probably remain small for the foreseeable future. Id. at paras. 12 and 30. Even with CMRS-to-CMRS interconnection, LECs are likely to continue to transport significant CMRS traffic over their landline local networks.

CMRS providers, in most markets, do not need the acquiescence of small LECs to gain interconnection to the landline public switched network. Small LECs do not routinely dominate the geographic area over which CMRS interconnection is necessary. CMRS providers seeking public switched landline network interconnection can in many, if not all, cases simply go to neighboring LECs or other local transport and landline facilities providers. Therefore, the Commission should discount its concerns with small LECs to force continued landline access arrangements to the benefit of their own access revenue flow. Refusal to allow CMRS-to-CMRS interconnection with LEC-affiliated CMRS providers will force the competitive CMRS provider either to seek CMRS-to-CMRS interconnection with another CMRS provider or to obtain landline access from another non-offending LEC, or both.

The competitive marketplace is still yet another factor arguing against any potential disparate anticompetitive motives of LEC-affiliated CMRS providers. Assuming that CMRS-to-CMRS traffic increases significantly and CMRS-to-CMRS interconnection becomes more efficient than CMRS-to-LEC-to-CMRS interconnection, then some CMRS providers will see the competitive opportunity to alter their operations. There will already be, or will emerge quickly given a competitive opportunity, CMRS providers without a LEC connection that will move to offer the more efficient interconnected services. A LEC-affiliated CMRS provider that attempts to avoid the competitive trend will only find its mobile services suffering in competition with the more efficient CMRS-to-CMRS interconnectors and will lose access revenues in any event.

If the intent is to apply a market power test as the basis for determining whether a carrier should be made subject to more regulatory obligations, the Commission should not lose sight of the fact that rural CMRS providers do not dominate the geographic market. The providers in population centers determine the marketplace for CMRS design on a large economic market basis; the rural providers are forced to follow the market trends. Additionally, rural CMRS providers should not find themselves penalized for being the only carrier committed to serving areas in which few other competitors are interested.

Finally, small LECs by virtue of their lack of financial strength and operation size have little real opportunity or market power to influence CMRS design and evolution. Therefore, given this and the discussion above, the Commission need not, and should not, adopt any special requirements or rules with respect to interconnection for small-LEC affiliated CMRS providers.

III. A PHASED REMOVAL OF A REQUIREMENT FOR CMRS PROVIDERS TO ALLOW RESALE BY FACILITIES-BASED COMPETITORS IS IN THE PUBLIC INTEREST.

NTCA supports the Commission's tentative conclusion that at some point in time facilities-based CMRS competitors should rely on their own built system and not on the resale of another competitor's services. Id. at paras. 88-94. The proper "window" time period after which the resale obligation would cease may need to incorporate a flexible evaluation scheme that takes into account, as the Commission recognizes, the relative level at which a CMRS provider is deemed to be a facilities-based competitor. Id. at para. 93.

IV. RESELLERS SHOULD BE TREATED THE SAME AS OTHER SIMILARLY SITUATED CUSTOMERS.

NTCA concurs with the Commission that resellers requests for service should not be filled any differently than for any other large volume customer. Id. at para. 85. NTCA submits that the fulfillment of resellers' service requests must continue to include a reasonableness test as would be applied to any other customer. CMRS providers must consider capacity limitations, cost recovery risk of new investment, risk of continued service utilization by a reseller, and imposition of other terms and conditions often applied to extraordinary volume customers. Resellers do not deserve special favorable treatment nor would there be any public benefit for such treatment.[1]

[1] NTCA also concurs that CMRS providers should not be forced to interconnect with resellers' switches. Id. at para. 96. If CMRS providers were required to provide switch interconnection to resellers, redundant costs would be incurred without counter-balancing customer benefits. Id. Moreover, resellers do not merit special treatment over facilities-based
(continued...)

V. CONCLUSION

Consistent with NTCA's Comments above, the Commission should maintain its cautious approach to imposing interconnection requirements on the developing CMRS industry. Marketplace forces acting on and among a sufficient number of competitors should be allowed to work. In evaluating this industry, the Commission should be aware that rural CMRS providers and CMRS providers affiliated with small LECs do not possess market power and should not be treated as such. Finally, resellers should not receive any more favorable treatment than any other similarly situated customer.

Respectfully submitted,

NATIONAL TELEPHONE COOPERATIVE ASSOCIATION

By: DAVID COSSON (SEW)
David Cosson
(202) 298-2326

Its Attorney

2626 Pennsylvania Avenue, N.W.
Washington, D.C. 20037

By: Steven E. Watkins
Steven E. Watkins
Sr. Industry Specialist
(202) 298-2333

June 14, 1995

---

[1](...continued)
CMRS providers for which the Commission has concluded that market forces should be adequate to determine the most beneficial interconnection terms. Id.

CERTIFICATE OF SERVICE

I, Rita H. Bolden, certify that a copy of the foregoing Comments of the National Telephone Cooperative Association in CC Docket No. 94-54 was served on this 14th day of June 1995, by first-class, U.S. Mail, postage prepaid, to the following persons on the attached list:

Rita H. Bolden

Rita H. Bolden

Chairman Reed E. Hundt
Federal Communications Commission
1919 M Street, N.W., Room 814-0101
Washington, D.C. 20554

Commissioner James H. Quello
Federal Communications Commission
1919 M Street, N.W., Room 802-0106
Washington, D.C. 20554

Commissioner Andrew C. Barrett
Federal Communications Commission
1919 M Street, N.W., Room 826-0103
Washington, D.C. 20554

Commissioner Rachelle B. Chong
Federal Communications Commission
1919 M Street, N.W., Room 844-0105
Washington, D.C. 20554

Commissioner Susan Ness
Federal Communications Commission
1919 M Street, N.W., Room 832-0104
Washington, D.C. 20554

Mr. Kent Nilsson, Chief
Cost Analysis Branch, Accounting
and Audits Division
Common Carrier Bureau
Federal Communications Commission
2000 L Street, N.W., Room 812-1600E
Washington, D.C. 20554

International Transcription Service
2100 M Street, N.W.
Suite 140
Washington, D.C. 20037